

NEW HAMPSHIRE COASTAL PROGRAM

Guide to Federal Consistency Coastal Zone Management Act § 307

**NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WATER DIVISION
WATERSHED MANAGEMENT BUREAU**



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NEW HAMPSHIRE COASTAL PROGRAM

Guide to Federal Consistency Coastal Zone Management Act § 307

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I. INTRODUCTION

The New Hampshire coast is rich with natural, recreational and cultural resources that improve our quality of life and support and strengthen our economy. The mission of the New Hampshire Coastal Program (NHCP) is to balance the preservation of coastal resources with the social and economic needs of current and succeeding/future generations. Through coordination with New Hampshire state agencies such as the Department on Environmental Services, Fish and Game Department, Department of Transportation, and Public Utilities Commission, federal activities occurring within the coastal zone are reviewed and assessed by NHCP for their potential impacts on coastal resources.

In 1972 Congress passed the [Coastal Zone Management Act \(CZMA\)](#) in recognition of the importance of the nation's coastal resources. The CZMA encouraged coastal states to develop programs to manage and balance competing uses of and impacts to coastal resources. In June 1982, New Hampshire received federal approval for the Ocean and Harbor Segment of its Coastal Program from the National Oceanic and Atmospheric Administration's (NOAA) [Office of Ocean and Coastal Resource Management \(OCRM\)](#). The NHCP incorporated areas in proximity to the Atlantic shore, from Seabrook to the Portsmouth Harbor line. In September 1988, the NHCP received approval from OCRM to expand its boundaries to cover all the near shore areas under tidal influence, including the lands that border Great Bay, Little Bay, and several tidal estuarine rivers and wetlands. In 2004, OCRM approved the NHCP's program amendment to expand its inland boundary to the jurisdictional borders of the 17 coastal municipalities (see [Figure 1](#)). The New Hampshire [Department of Environmental Services \(DES\)](#) currently administers the NHCP. Prior to July 2004, the New Hampshire Office of State Planning, and later the New Hampshire Office of Energy and Planning, administered the NHCP.

Because federal activities can greatly impact a state's coastal resources, the CZMA established a formal review process commonly known as federal consistency. [Section 307 of the CZMA](#), the federal consistency provision, provides a mechanism for states to manage the use of coastal resources and to facilitate cooperation and coordination with federal agencies. The federal consistency review process in New Hampshire ensures that federal activities affecting any land or water use, or natural resource in New Hampshire's coastal zone will be conducted in a manner consistent with the [enforceable policies](#) of the NHCP. The NHCP's [enforceable policies](#) fall within the following categories (for a complete listing of these policies, refer to [Appendix B](#)):

- Protection of coastal resources
- Recreation and public access
- Management of coastal development
- Coastal dependent uses
- Preservation of historic and cultural resources
- Marine and estuarine research and education

As further described in Section II, federal activities can take the form of activities proposed by federal agencies, activities proposed by non-federal entities requiring federal licenses or permits, and activities involving federal financial assistance to state agencies or local governments.

This document is for informational purposes only. It is not intended to replace the information contained in the [New Hampshire Coastal Program and Final Environmental Impact Statement, July 1988 \(NHCP Program Document\)](#) or the procedures described in [Section 307 of the CZMA](#) or in NOAA's [CZMA federal consistency regulations \(15 C.F.R. part 930\)](#). Please refer to applicable parts of the CZMA, NOAA's regulations, the NHCP Program Document and the [enforceable policies](#) incorporated into the federally approved New Hampshire Coastal Program for official substantive and procedural requirements. This informational document provides agencies, applicants, municipalities and the general public with an informal "how to" guide for the submission of CZMA federal consistency determinations to the NHCP. Sections I through V of the document provide a brief overview of [Section 307 of the CZMA](#) and the NHCP's role in it, while details of the NHCP and specific CZMA federal consistency procedures are provided in the Appendices.

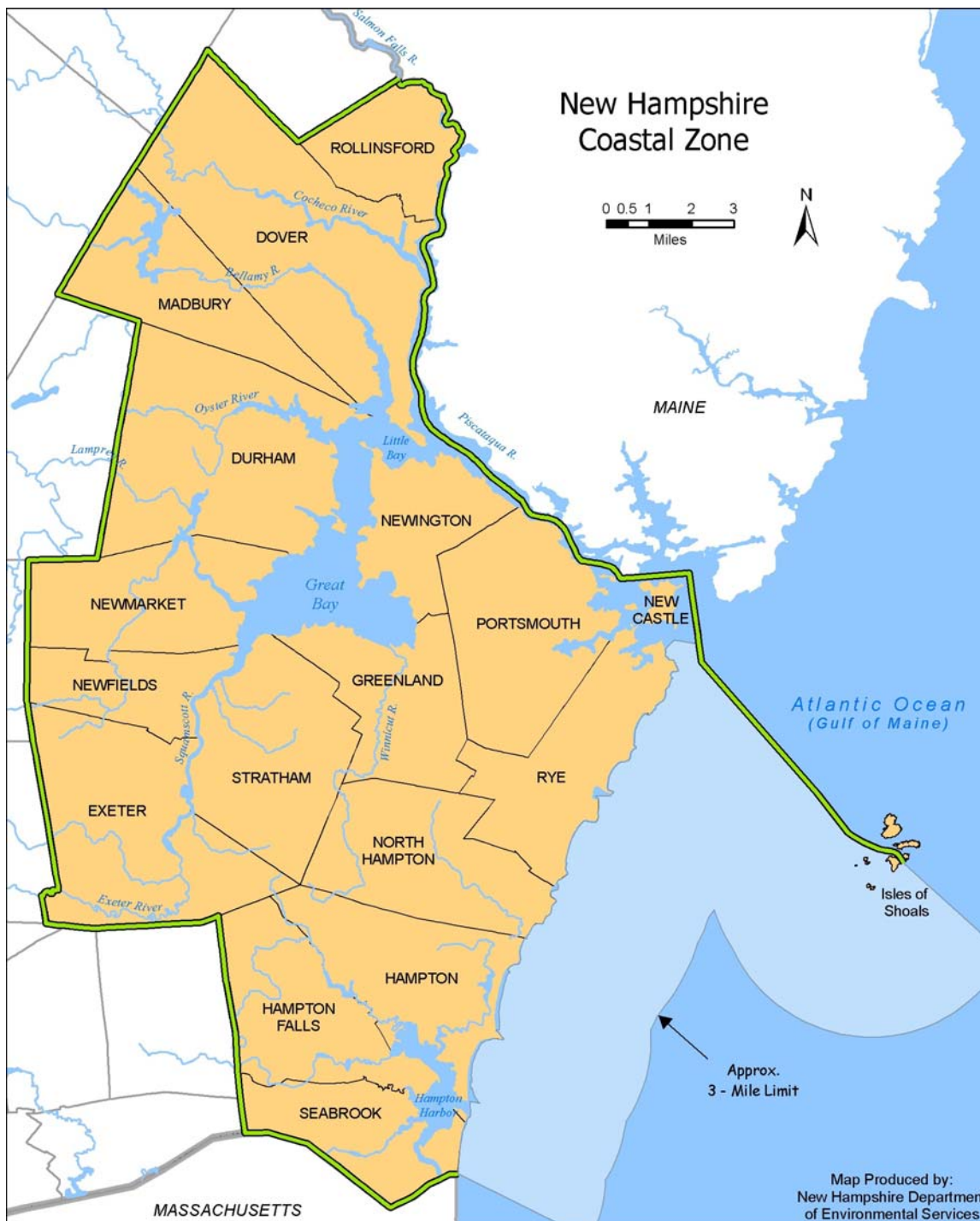


Figure 1: For a list of communities located in the coastal zone and for a list of lands excluded from the coastal zone see Appendix A.



II. ACTIVITIES REQUIRING A CONSISTENCY REVIEW BY THE NHCP

The following activities are subject to a federal consistency review when it is reasonably foreseeable that they will affect any land or water use or natural resource within the coastal zone of the NHCP:

- A. **Federal Agency Activities** – activities undertaken by, or on behalf of, a federal agency, for example fisheries management plans by the National Marine Fisheries Service, U.S. Army Corps of Engineers beach renourishment and dredging projects, Naval exercises.
- B. **Federal License or Permit Activities** – activities requiring a non-federal applicant to obtain a federal license or permit, for example activities requiring U.S. Army Corps of Engineers Section 10 or 404 permits, U.S. EPA National Pollution Discharge Elimination System (NPDES) Permits, licenses from the Federal Energy Regulatory Commission for hydroelectric facilities.
- C. **Outer Continental Shelf Exploration, Development and Production Activities.**
- D. **Federal Financial Assistance Activities to State and Local Governments** – for example Federal Highway Administration funds, construction grants for wastewater treatment facilities, Housing and Urban Development grants.

III. NHCP FEDERAL CONSISTENCY RESPONSIBILITIES

Federal consistency reviews are the responsibility of the lead state agency that implements or coordinates the state's federally approved coastal management program. The NHCP is responsible for finalizing all federal [CZMA Section 307](#) consistency decisions in New Hampshire. The NHCP is required to "uniformly and comprehensively apply the [enforceable policies](#) of the state's management program, efficiently coordinate all state coastal management requirements, and to provide a single point of contact for federal agencies and the public to discuss consistency issues," in accordance with 15 C.F.R. § 930.6. To fulfill these obligations, the NHCP is networked with other state agencies that help enforce the program's [enforceable policies](#) and conduct reviews of federal activities occurring in the coastal zone. The NHCP also coordinates the review of federal activities with local governments, regional planning commissions, non-governmental organizations and the public.



IV. FEDERAL CONSISTENCY REVIEW PROCEDURES

The NHCP reviews those federal activities that have reasonably foreseeable effects on any land or water use or natural resource of the coastal zone. The term “effect” includes both direct and indirect (cumulative and secondary) effects. For federal agency activities, federal agencies make the determination of reasonably foreseeable effects. For federal license or permit activities and federal financial assistance activities, reasonably foreseeable coastal effects are presumed if the activity is included in the NHCP’s list of federal activities subject to consistency review (see [Appendix C](#)). For a detailed review of the CZMA federal consistency review procedures as they specifically relate to each of the activities listed in Section II, please refer to [Appendix D](#), or review the federal consistency regulations (15 CFR part 930) directly at OCRM’s web site at:

http://coastalmanagement.noaa.gov/consistency/media/FC_REGS_CHANGES.pdf.

The following summarizes the CZMA federal consistency review procedures:

1. To facilitate the consistency review process, it is recommended that federal agencies and applicants coordinate with the NHCP prior to submitting their consistency determination/certification and supporting information.
2. For **federal agency activities**, the federal agency must submit to the NHCP a consistency determination, including a detailed description of the activity and its coastal effects, and comprehensive data and information sufficient to support the agency’s consistency determination.

For **federal license or permit activities**, the applicant must submit to the NHCP a certification, including necessary data and information, pursuant to 15 C.F.R. § 930.58, that the proposed activity will be conducted in a manner consistent with the [enforceable policies](#) of the NHCP.

For **federal financial assistance activities**, the applicant must submit to the NHCP the application for federal financial assistance and a brief evaluation on the relationship of the proposed activity and any reasonably foreseeable coastal effects to the [enforceable policies](#) of the NHCP.

3. The NHCP acknowledges receipt of the CZMA consistency information and notifies the federal agency or applicant of the anticipated review schedule and any remaining information needed to complete CZMA consistency review.
4. Federal activities are reviewed concurrently by the appropriate state, local and regional agencies to determine compliance with coastal policies and state laws.
5. The NHCP coordinates any public notice and/or hearing if deemed necessary.

6. The NHCP issues its consistency decision. In the event of a disagreement or conflict, the NHCP works with the federal agency or applicant and reviewing state and/or local agency to amend the activity so that it will be conducted in a manner consistent with the enforceable policies of the NHCP. For details regarding mediation, NHCP objections, and appeals procedures, please refer to Appendix E.

For more information about CZMA federal consistency and the NHCP or for copies of this document, visit our web site at: http://des.nh.gov/Coastal/Federal_Consistency.html. For general information about the CZMA visit the OCRM web site at: www.coastalmanagement.noaa.gov, and for OCRM's federal consistency information: www.coastalmanagement.noaa.gov/consistency/welcome.html.

TABLE 1. SUMMARY OF FEDERAL CONSISTENCY PROVISIONS

	Federal Agency Activities & Development Projects	Federal License or Permit Activities	OCS Plans: Exploration Development & Production	Federal Assistance to State and Local Governments
CZMA Section 307	(c)(1)&(2)	(c)(3)(A)	(c)(3)(B)	(d)
Activity subject to review, if it...	Affects any land or water use or natural resource of the coastal zone.	Affects any land or water use or natural resource of the coastal zone.	Affects any land or water use or natural resource of the coastal zone.	Affects any land or water use or natural resource of the coastal zone.
Consistency requirement	Consistent to the maximum extent practicable with NHCP enforceable policies.	Consistent with NHCP enforceable policies.	Consistent with NHCP enforceable policies.	Consistent with NHCP enforceable policies.
Who determines whether federal activity will have reasonably foreseeable coastal effects?	Federal agency	NHCP and OCRM	NHCP and OCRM	NHCP and OCRM
Time limit for NHCP review	60 days, plus one 15 day extension if requested	6 months	6 months	Intergovernmental Review Process schedule
Impact of NHCP objection to consistency determination	Federal agency may proceed only if it cites legal authority as to why it must proceed despite inconsistency.	Federal agency may not issue permit, license, or other approval.	Federal agency may not approve plan or issue permits.	Federal agency may not grant financial assistance.
Administrative conflict resolution	Mediation by the Secretary of Commerce or OCRM (voluntary, non-binding).	Appeal to the Secretary of Commerce to override state objection.	Appeal to the Secretary of Commerce to override state objection.	Appeal to the Secretary of Commerce to override state objection.



V. DEFINITIONS

Coastal Effect – any reasonably foreseeable effect on any coastal use or resource resulting from a federal agency activity or federal license or permit activity. Effects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects are effects resulting from the incremental impact of the federal action when added to other past, present, and reasonably foreseeable actions, regardless of what person(s) undertake(s) such actions. [See 15 C.F.R. § 930.11(g).]

Coastal Resources – natural biological and physical resources within the coastal zone, including, but not limited to, air, tidal and nontidal wetlands, ocean waters, estuaries, rivers, streams, lakes, aquifers, minerals, submerged aquatic vegetation, land, plants, trees, fish, shellfish, invertebrates, amphibians, birds, mammals, and reptiles. [See 15 C.F.R. § 930.11(b).]

Coastal Uses – land and water uses within the coastal zone, including, but not limited to, public access, recreation, fishing, historic or cultural preservation, development, marinas, floodplain management, scenic and aesthetic enjoyment, and resource creation and restoration. [See 15 C.F.R. § 930.11(b).]

Coastal Zone – the geographic boundary of the NHCP, pursuant to 16 U.S.C. 1453(1) and NOAA regulations at 15 C.F.R. part 923, subpart D, which includes areas in proximity to the Atlantic shore from Seabrook to the Portsmouth Harbor line, all near shore areas under tidal influence, including the lands that border Great Bay, Little Bay, and several tidal estuarine rivers and wetlands, and the jurisdictional borders of the 17 municipalities listed in [Appendix A](#). (See [Figure 1](#).)

Coastal Zone Management Act (CZMA) – federal law enacted in 1972 to encourage coastal states to develop management programs to manage and balance competing uses of and impacts to coastal resources. The CZMA is administered at the federal level by the Office of Ocean and Coastal Resource Management (OCRM) within the National Oceanic and Atmospheric Administration.

Consistency Certification – a document submitted to the NHCP by any non-federal applicant for a federal license or permit, pursuant to NOAA regulations at 15 C.F.R. part 930, subpart D, indicating that a proposed activity will have reasonably foreseeable coastal effects and containing necessary data and information to support the applicant's assertion that the activity complies with the enforceable policies of the NHCP and that such activity will be conducted in a manner consistent with these policies.

Consistency Determination – a document submitted to the NHCP by, or on behalf of, a federal agency, pursuant to NOAA regulations at 15 C.F.R. part 930, subpart C, indicating that a proposed federal agency activity will have reasonably foreseeable coastal effects and containing sufficient information, data and analysis, pursuant to 15 C.F.R. § 930.39, to support the agency's assertion that the activity is consistent to the maximum extent practicable with the enforceable policies of the NHCP.



Enforceable Policies – state policies that are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a state exerts control over private and public land and water uses and natural resources in the coastal zone, and which are incorporated in the state’s federally approved coastal management program. [See 15 C.F.R. § 930.11(h).]

Federal Agency Activity – any functions performed by or on behalf of a federal agency in the exercise of its statutory responsibilities. [See 15 C.F.R. § 930.31(a).]

Federal Consistency – a requirement of the Coastal Zone Management Act (CZMA) that federal actions that have reasonably foreseeable effects on any land or water use or natural resource of the coastal zone must be consistent with the enforceable policies of a state’s federally approved coastal management program.

Federal Development Project – a federal agency activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and includes the acquisition, use or disposal of any coastal use or resource. [See 15 C.F.R. § 930.31(b).]

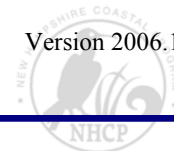
Federal Financial Assistance Activity – an activity for which state or local governments request federal financial assistance.

Federal License or Permit Activity – an activity not performed by a federal agency but requiring federal permits, licenses or other forms of federal approval.

New Hampshire Coastal Program (NHCP) – New Hampshire’s federally approved coastal management program under the Coastal Zone Management Act.

Office of Ocean and Coastal Resource Management (OCRM) – federal office within the National Oceanic and Atmospheric Administration’s (NOAA’s) National Ocean Service that interprets the CZMA and oversees the application of federal consistency, provides management and legal assistance to coastal states, federal agencies and others, and mediates CZMA related disputes.

Outer Continental Shelf Lands Act (OCSLA) – federal law enacted in 1953 that established federal jurisdiction over submerged lands on the Outer Continental Shelf (OCS) seaward of state coastal waters. Under the OCSLA, the Secretary of the Interior is responsible for the administration of mineral exploration and development of the OCS. The OCSLA empowers the Secretary to grant leases and to formulate regulations as necessary to carry out the provisions of the Act. The OCSLA, as amended, provides guidelines for implementing an OCS oil and gas exploration and development program, and authorities for ensuring that such activities are safe and environmentally sound.



APPENDIX A.

COMMUNITIES WITHIN THE NEW HAMPSHIRE COASTAL ZONE

Landward Boundary

The entire land area of the following communities is located within the boundary of the NHCP:

Dover	Durham	Exeter
Greenland	Hampton	Hampton Falls
Madbury	Newfields	Newington
Newmarket	New Castle	North Hampton
Portsmouth	Rollinsford	Rye*
Seabrook	Stratham	

* Includes the New Hampshire portion of the Isles of Shoals.

Seaward Boundary

The seaward boundary of the NHCP is the outer limit of the territorial sea, currently three nautical miles (1 nautical mile = 6,076 feet).

Exempted Land

Land owned or controlled by the federal government is excluded from the state's coastal zone, but is still subject to the [enforceable policies](#) of the NHCP through the CZMA federal consistency provision:

Dover	U.S. Air Force Recruiting Station
	U.S. Army; New Hampshire National Guard
	U.S. Army Recruiting Office
	U.S. Marine Corps Recruiting Station
	U.S. Post Office
Durham	U.S. Department of Agriculture; Forest Service – Northeastern Research Station
	U.S. Department of Agriculture; Natural Resources Conservation Office
	U.S. Marine Corps Recruitment Center
	U.S. Marine Corps Officer Selection Office
	U.S. Post Office
Exeter	U.S. Post Office
Greenland	U.S. Post Office (370 Portsmouth Ave)
	U.S. Post Office (609 Portsmouth Ave)
Hampton	U.S. Post Office
Hampton Falls	U.S. Post Office
New Castle	U.S. Coast Guard Station



	U.S. Coast Guard Station Safety and Security Zone
	U.S. Post Office
Newfields	U.S. Post Office
Newington	Pease International Tradeport Air National Guard Station
	U.S. Fish & Wildlife Service; Great Bay National Wildlife Refuge
	U.S. Fish & Wildlife Service - Refuges & Wildlife
Newmarket	U.S. Post Office
North Hampton	U.S. Post Office
Portsmouth	General Services Administration
	Pease Air National Guard Main Store
	T.J. McIntyre Federal Building
	U.S. Air Force Recruiting Station (170 Commerce Way)
	U.S. Air Force Recruiting Station (215 Commerce Way)
	U.S. Army New Hampshire National Guard
	U.S. Army Recruiting Service
	U.S. Federal Bureau of Investigation
	U.S. Fish & Wildlife Service – Law Enforcement
	U.S. Marine Corps Recruiting Station
	U.S. National Passport Center
	U.S. National Visa Center
	U.S. Navy Recruiting Station
	U.S. Post Office
	U.S. Post Office – Portsmouth P & DC
	U.S. Small Business Administration
	U.S. Social Security Administration
	U.S. Treasury Department
Rollinsford	U.S. Post Office
Rye	U.S. Post Office
	U.S. Post Office – Rye Beach
Seabrook	Seabrook Station Power Plant Safety and Security Zone
	U.S. Nuclear Regulatory Commission – Resident Inspector Office
Stratham	U.S. Army; New Hampshire National Guard
	U.S. Post Office



APPENDIX B.

COASTAL PROGRAM POLICIES

The laws and policies are discussed in detail in the *New Hampshire Coastal Program Final Environmental Impact Statement*, July, 1988. There was a text change approved by NOAA in September 2003 to Policy #13. The policies themselves are as follows.

PROTECTION OF COASTAL RESOURCES

1. Protect and preserve and, where appropriate, restore the water and related land resources of the coastal and estuarine environments. The resources of primary concern are coastal and estuarine waters, tidal and freshwater wetlands, beaches, sand dunes, and rocky shores.
2. Manage, conserve and, where appropriate, undertake measures to maintain, restore, and enhance the fish and wildlife resources of the state.
3. Regulate the mining of sand and gravel resources in offshore and onshore locations so as to ensure protection of submerged lands, and marine and estuarine life. Ensure adherence to minimum standards for restoring natural resources impacted from onshore sand and gravel removal operations.
4. Undertake oil spill prevention measures, safe oil handling procedures and, when necessary, expedite the cleanup of oil spillage that will contaminate public waters. Institute legal action to collect damages from liable parties in accordance with state law.
5. Encourage investigations of the distribution, habitat needs, and limiting factors of rare and endangered animal species and undertake conservation programs to ensure their continued perpetuation.
6. Identify, designate, and preserve unique and rare plant and animal species and geologic formations which constitute the natural heritage of the state. Encourage measures, including acquisition strategies, to ensure their protection.

RECREATION AND PUBLIC ACCESS

7. Provide a wide range of outdoor recreational opportunities including public access in the seacoast through the maintenance and improvement of the existing public facilities and the acquisition and development of new recreational areas and public access.

MANAGING COASTAL DEVELOPMENT

8. Preserve the rural character and scenic beauty of the Great Bay estuary by limiting public investment in infrastructure within the coastal zone in order to limit development to a mixture of low and moderate density.
9. Reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to preserve the natural and beneficial value of floodplains, through the implementation of the National Flood Insurance Program and applicable state laws and regulations, and local building codes and zoning ordinances.
10. Maintain the air resources in the coastal area by ensuring that the ambient air pollution level, established by the New Hampshire State Implementation Plan pursuant to the Clean Air Act, as amended, is not exceeded.
11. Protect and preserve the chemical, physical, and biological integrity of coastal water resources, both surface and groundwater.
12. Ensure that the siting of any proposed energy facility in the coast will consider the national interest and will not unduly interfere with the orderly development of the region and will not have an unreasonable adverse impact on aesthetics, historic sites, coastal and estuarine waters, air and water quality, the natural environment and the public health and safety.

COASTAL DEPENDENT USES

13. Allow only water dependent uses and structures on state properties in Portsmouth-Little Harbor, Rye Harbor, and Hampton-Seabrook Harbor, at state port and fish pier facilities and state beaches (except those uses or structures which directly support the public recreation purpose). For new development, allow only water dependent uses and structures over waters and wetlands of the state. Allow repair of existing over-water structures within guidelines. Encourage the siting of water dependent uses adjacent to public waters.
14. Preserve and protect coastal and tidal waters and fish and wildlife resources from adverse effects of dredging and dredge disposal, while ensuring the availability of navigable waters to coastal-dependent uses. Encourage beach renourishment and wildlife habitat restoration as a means of dredge disposal whenever compatible.

PRESERVATION OF HISTORIC AND CULTURAL RESOURCES

15. Support the preservation, management, and interpretation of historic and culturally significant structures, sites and districts along the Atlantic coast and in the Great Bay area.

MARINE AND ESTUARINE RESEARCH AND EDUCATION

16. Promote and support marine and estuarine research and education that will directly benefit coastal resource management.

APPENDIX C.

LISTED FEDERAL ACTIVITIES SUBJECT TO CONSISTENCY REVIEW

I. FEDERAL AGENCY ACTIVITIES

All Federal Agencies

- . Any development activity conducted by the agencies listed below on excluded federal lands if that activity affects the coastal zone. (16 U.S.C. §§ 1456(c) (1) and (c) (2))

Department of Commerce/National Marine Fisheries Service

- . Fisheries management plans - consistency reviews of these plans are based on the general policies that address fish and wildlife management. (16 U.S.C. §§ 1801-1882)

Department of Defense/Air Force, Army and Navy

- . Location, acquisition, and design of new or enlarged defense installations. Actions conducted on federal lands with potential impact on non-federal coastal land and water including construction or expansion of buildings or acquisition of land. (10 U.S.C. § 2802)

Department of Defense/Army Corps of Engineers

- . Proposed projects, authorizations for dredging, channel works, breakwaters, other navigation works, erosion control structures, reservoirs, dams, beach nourishment, and other public works projects. (33 U.S.C. § 403)

Department of Homeland Security/Coast Guard

- . Location, design, and acquisition of new or enlarged installations. (14 U.S.C. § 92)

Department of the Interior/Fish and Wildlife Services

- . Acquisition and management including master plans of National Wildlife refuges. (16 U.S.C. §§ 668dd-668ee; Pub. L. No. 105-57)

Department of the Interior/National Park Service

- . Acquisition and management including master plans of national parks and seashores. (16 U.S.C. §§ 1-460)

Department of Transportation/Federal Aviation Administration

- . Construction, maintenance, and demolition of federal aids to navigation. (49 U.S.C. § 44502)

Environmental Protection Agency

- . Designation of Ocean dumping and incineration sites, including at-sea incineration. (33 U.S.C. §§ 1412(c))

General Services Administration

- . Disposal of surplus federal land, property acquisition and building construction. (40 U.S.C. §§ 601-619)

II. FEDERALLY LICENSED OR PERMITTED ACTIVITIES

Department of Defense/Army Corps of Engineers

- . Section 10 permit; Rivers and Harbors Act of 1899 (33 U.S.C. § 403)
- . Section 9 and 10 permits; Rivers and Harbors Act of 1899 (33 U.S.C. § 403, § 404)
- . Section 404 permit; Clean Water Act and amendments (33 U.S.C. § 1344)
- . Section 103 permit, Marine Protection Research and Sanctuaries Act of 1972 as amended. (33 U.S.C. § 1413)

Department of Energy/Federal Energy Regulatory Commission

- . License for non-federal hydroelectric projects; Section 4(e), Federal Power Act. (16 U.S.C. § 797(e))
- . Abandonment of gas pipeline; Section 7, National Gas Act. (15 U.S.C. § 717(f))
- . Certificates authorizing construction, or operation of, or facilities for transportation or storage of natural gas; section 7, Natural Gas Act. (15 U.S.C. § 717(f))
- . Options and orders for permission for delivery of imported LNG. (15 U.S.C. § 717(b)). This activity was formerly under the jurisdiction of the Department of Energy/Economic Regulatory Administration.

Department of the Interior/Bureau of Land Management and Minerals Management Service

- . Permit for pipeline rights-of-way for oil and gas transmission on Outer Continental Shelf (OCS). (43 U.S.C. § 1334(e))

Department of the Interior/Minerals Management Service

- . Plans for the exploration, development and production of OCS resources. Oil or gas leasing activities are specifically exempted. (43 U.S.C. § 1351)

Department of Transportation and Department of Homeland Security/Coast Guard

- . License for the construction and operation of deepwater ports; Deepwater Port Act of 1974. (33 U.S.C. § 1503)
- . Permit for construction or modification of bridge structures across navigable waters of the United States. (33 U.S.C. § 401)

Department of Transportation/Federal Aviation Administration

- . Permit and license for the construction, operation, or alteration of airports. (49 U.S.C. § 44702 and 47112)

Environmental Protection Agency

- . National Pollution Discharge Elimination System (NPDES) permit; Section 402 and 403, Federal Water Pollution Control Act. (33 U.S.C. §§ 1342 and 1343) Ocean dumping permit (exercised jointly with Army Corps of Engineers) Section 102 permit, Marine Protection Research and Sanctuaries Act of 1993 as amended. (33 U.S.C. § 1412)

National Surface Transportation Board

- . Abandonment of rail lines. (49 U.S.C. § 10903)

Any state objections or conditions under this activity must be limited to those that do no interfere with interstate rail operations or seek to impose pre-abandonment requirements. This activity was formerly under the jurisdiction of the Interstate Commerce Commission.

Nuclear Regulatory Commission

- . Permit and license required for the construction and operation of nuclear plant. (42 U.S.C. § 2133)

III. FEDERAL FINANCIAL ASSISTANCE ACTIVITIES

The following is a list of the federal programs requiring consistency review through the intergovernmental review process, pursuant to federal [Executive Order 12372](#). While program titles may differ from those listed in the [New Hampshire Coastal Program and Final Environmental Impact Statement](#), July 1988 (NHCP Program Document), the nature of the programs and the corresponding program numbers remain the same. Programs identified in the NHCP Program Document that are not listed below have either been eliminated or are no longer subject to intergovernmental review. For the most up to date list of federal programs requiring intergovernmental review, please visit the Catalog of Federal Domestic Assistance (CFDA) web site at: <http://www.cfda.gov>. Please note, this list is subject to change. For additional questions, please contact the NHCP Federal Consistency Coordinator identified in [Appendix I](#).

DEPARTMENT OF AGRICULTURE

- 10.025 Plant and Animal Disease and Pest Control
- 10.156 Federal-State Marketing Improvement Program
- 10.405 Farm Labor Housing Loans and Grants
- 10.411 Rural Housing Site Loans and Self Help Housing Land Development Loans
- 10.415 Rural Rental Housing Loans
- 10.420 Rural Self-Help Housing Technical Assistance
- 10.427 Rural Rental Assistance Payments
- 10.433 Rural Housing Preservation Grants
- 10.475 Cooperative Agreements with States for Intrastate Meat & Poultry Inspection
- 10.550 Food Donation
- 10.553 School Breakfast Program
- 10.555 National School Lunch Program
- 10.556 Special Milk Program for Children
- 10.557 Special Supplemental Food Program for Women, Infants and Children
- 10.558 Child and Adult Care Food Program
- 10.559 Summer Food Service Program for Children
- 10.560 State Administrative Expenses for Child Nutrition
- 10.561 State Administrative Matching Grants for Food Stamp Program
- 10.565 Commodity Supplemental Food Program

- 10.568 Emergency Food Assistance Program (Administrative Costs)
- 10.901 Resource Conservation and Development
- 10.904 Watershed Protection and Flood Prevention (Small Watershed Program)
- 10.906 Watershed Surveys and Planning (formerly River Basin Surveys and Investigations)

DEPARTMENT OF COMMERCE

- 11.300 Grants for Public Works and Economic Development Facilities
- 11.302 Economic Development - Support for Planning Organizations
- 11.303 Economic Development - Technical Assistance
- 11.307 Economic Adjustment Assistance
- 11.405 Anadromous Fish Conservation Act Program
- 11.407 Interjurisdictional Fisheries Act of 1986
- 11.419 Coastal Zone Management Administration Awards
- 11.420 Coastal Zone Management Estuarine Research Reserves
- 11.426 Financial Assistance for National Centers for Coastal Ocean Science
- 11.427 Fisheries Development and Utilization Research and Development Grants and Cooperative Agreements Program (State and Local Government Applicants)
- 11.428 Intergovernmental Climate Program (NESDIS)
- 11.550 Public Telecommunications Facilities Planning and Construction

DEPARTMENT OF DEFENSE

- No # Installation Comprehensive Master Planning
- No # Military Construction
- No # Family Housing
- No # Real Property Acquisition and Disposal
- No # Withdrawals of Public Domain Land for Military Use
- No # Substantial Changes in Existing Use of Installations
- No # Air Installation Compatible Use Zone (AICUZ) Studies
- No # Natural Resources Plans
- No # Floodplain Management and Wetlands Protection
- No # Appropriate Information and Data for Regional Plans, Programs, and Projects
- No # Planning, Design and Construction of Civil Works Projects Specifically Authorized by Congress
- No # Recreation Facilities at Completed Projects Continuing Authorities Program
- Planning, Design and Construction of Small Projects Not Specifically Authorized by Congress
- No # Mitigation of Shore Damage Attributable to Navigation Projects (Section 111 Program)

- 12.100 Aquatic Plant Control
- 12.101 Beach Erosion Control Projects (Section 103 Program)
- 12.105 Protection of Essential Highways, Highway Bridge Approaches and Public Works
- 12.106 Flood Control Projects (Section 205 Program)
- 12.107 Navigation Projects (Section 107 Program)
- 12.108 Snagging and Clearing for Flood Control



12.109 Protection, Clearing and Straightening Channels (Section 3 Program) – (formerly Snagging and Cleaning for Navigation)

12.110 Planning Assistance to States (Section 22 Program)

12.607 Community Economic Adjustment Planning Assistance

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

14.112 Mortgage Insurance for Construction or Substantial Rehabilitation of Condominium Projects

14.126 Mortgage Insurance - Cooperative Projects

14.127 Mortgage Insurance - Manufactured Home Parks

14.134 Mortgage Insurance - Rental Housing

14.135 Mortgage Insurance - Rental and Cooperative Housing for Moderate Income Families and Elderly, Market Interest Rate

14.138 Mortgage Insurance - Rental Housing for the Elderly

14.139 Mortgage Insurance - Rental Housing in Urban Renewal Areas

14.151 Supplemental Loan Insurance - Multifamily Rental Housing

14.157 Supportive Housing for the Elderly

14.218 Community Development Block Grants/Entitlement Grants

14.850 Public and Indian Housing (review only if land use change, increase in project density of change from rental to condominium housing)

DEPARTMENT OF THE INTERIOR

15.605 Sport Fish Restoration (Dingell-Johnson Program or D-J Program)

15.611 Wildlife Restoration (Pittman-Robertson Program or P-R Program)

15.904 Historic Preservation Grants-in-Aid

15.916 Outdoor Recreation - Acquisition Development and Planning (Land and Water Conservation Fund Grants)

15.919 Urban Park and Recreation Recovery Program

DEPARTMENT OF JUSTICE

No # Bureau of Prisons - Construction projects such as correctional institutions and detention centers

No # Immigration and Naturalization Service - Construction projects such as border patrol stations

No # U.S. Marshals Service - Cooperative Agreement Program

No # Office of Justice Assistance, Research, and Statistics - Categorical Grants for Crime Prevention and Criminal Justice Improvement

No # Bureau of Justice Assistance – Transfer of Surplus Real Property for Correctional Purposes (see 39.002 under General Services Administration)

16.540 Juvenile Justice and Delinquency Prevention - Allocation to States (State Formula Grants)

16.550 State Justice Statistics Program for Statistical Analysis Centers

DEPARTMENT OF LABOR

17.207 Employment Service
17.235 Senior Community Service Employment Program
17.600 Mine Health and Safety Grants
17.801 Disabled Veterans' Outreach Program (DVOP)
17.802 Veterans' Employment Program
17.804 Local Veterans' Employment Representative Program (LVER Program)

DEPARTMENT OF TRANSPORTATION

20.106 Airport Improvement Program (formerly Aviation Research Grants)
20.205 Highway Planning and Construction (Federal-Aid Highway Program)
20.303 Grants-in-Aid for Railroad Safety – State Participation
20.500 Federal Transit – Capital Investment Grants

20.505 Federal Transit – Metropolitan Planning Grants
20.507 Federal Transit – Formula Grants
20.509 Formula Grants for Other Than Urbanized Areas

20.600 State and Community Highway Safety
20.700 Pipeline Safety (formerly Natural Gas Pipeline Safety Grants)
20.801 Development and Promotion of Ports and Intermodal Transportation

GENERAL SERVICES ADMINISTRATION

No # 41 CFR 101-18.100 (e) Lease Construction Projects
No # 41 CFR 101-19.100 Intergovernmental Consultation on Federal Projects

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

No # Direct Federal Development – To Be Identified As It Arises

SMALL BUSINESS ADMINISTRATION

59.037 Small Business Development Center

DEPARTMENT OF VETERANS AFFAIRS

64.005 Grants to States for Construction of State Home Facilities
64.203 State Cemetery Grants

No # Acquisition of Real Property for National Cemeteries and Memorials, where the burial expansion area is 20 acres or more.

Acquisition and Disposition of Property:

- A building addition or new structure (Minor utility pads or equipment and projects for additions, alterations, or modernization which do not substantially alter the scale, the type of, or intensity or use of a facility are not included).
- A major facility modernization that may require new primary sources of discharge points from the community.
- An acquisition of real property, including the acquisition of real property for medical facilities under 38 U.S.C. 621 and 38 U.S.C. 5003.
- A major building demolition project exceeding \$500,000 expenditure.
- A project for inpatient care purposes exceeding \$2,000,000 and either:
 - a. Increases the bed capacity by 25,
 - b. Modifies the primary function of the facility, or
 - c. Provides a major new medical care service.

ENVIRONMENTAL PROTECTION AGENCY

66.001 Air Pollution Control Program Support
66.418 Construction Grants for Wastewater Treatment Works

66.419 Water Pollution Control – State and Interstate Program Support (Section 106 Grants)
66.432 State Public Water System Supervision
66.433 State Underground Water Source Protection
66.454 Water Quality Management Planning
66.456 National Estuary Program

66.600 Environmental Protection Consolidated Grants – Program Support
66.801 Hazardous Waste Management, State Support Program
66.802 Superfund State, Political Subdivision, and Indian Tribe Site – Specific Cooperative Agreements
66.804 State and Tribal Underground Storage Tanks Program (UST Program)

No # Real Property Acquisition or Disposition, Including Obtaining Major Leases or Easements

No # Construction of New EPA Facilities

No # EPA Issued Plans and Permits Which do not Impact Interstate Areas

DEPARTMENT OF ENERGY

81.041 State Energy Program
81.042 Weatherization Assistance for Low-Income Persons
81.049 Office of Science Financial Assistance Program

POSTAL SERVICE

No # New Facility Construction, Owned or Leased
No # Expansion of an Existing Facility
No # Purchase or Lease of an Existing Building if a New or Substantially Enlarged Occupancy is Involved.
No # Real Property Disposals
No # Other postal facility actions that might directly affect state or local community plans

DEPARTMENT OF EDUCATION

84.002 Adult Education – State Grant Program

84.011 Migrant Education – State Grant Program
84.040 Impact Aid – Facilities Maintenance
84.041 Impact Aid
84.048 Vocational Education – Basic Grants to States
84.083 Women's Educational Equity Act Program

84.126 Rehabilitation Services – Vocational Rehabilitation Grants to States
84.132 Centers for Independent Living
84.145 Federal Real Property Assistance Program
84.161 Rehabilitation Services – Client Assistance Program
84.165 Magnet Schools Assistance
84.169 Independent Living State Grants
84.173 Special Education – Preschool Grants
84.177 Rehabilitation Services – Independent Living Services for Older Individuals Who are Blind

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

89.003 National Historical Publications and Records Grants

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Program numbers formerly began with the number 13 (e.g., 13.116)

93.116 Project Grants and Cooperative Agreements for Tuberculosis Control Programs (Public Health Service Act)
93.118 Acquired Immunodeficiency Syndrome (AIDS) Activity
93.129 Technical and Non-Financial Assistance to Health Centers
93.137 Community Programs to Improve Minority Health Grant Program

93.217 Family Planning – Services
93.224 Consolidated Health Centers (Community Health Centers, Migrant Health Centers, Health Care for the Homeless, Public Housing Primary Care, and School Based Health Centers)
93.260 Family Planning – Personnel Training
93.268 Immunization Grants
93.392 Cancer Construction
93.600 Head Start
93.623 Basic Center Grant
93.631 Developmental Disabilities Projects of National Significance
93.669 Child Abuse and Neglect State Grants
93.670 Child Abuse and Neglect Discretionary Activities
93.965 Coal Miners Respiratory Impairment Treatment Clinics and Services
93.977 Preventive Health Services – Sexually Transmitted Diseases Control Grants
93.988 Cooperative Agreements for State-Based Diabetes Control Programs and Evaluation of Surveillance Systems
93.990 National Health Promotion
93.995 Adolescent Family Life Demonstration Projects



APPENDIX D.

SPECIFIC CONSISTENCY PROCEDURES

I. FEDERAL AGENCY ACTIVITIES

Pursuant to [CZMA § 307\(c\)\(1\)](#), federal agency activities and development projects affecting any land or water use or natural resource of the coastal zone must be consistent to the maximum extent practicable with the enforceable policies of federally approved state CZMA programs. NOAA regulations at 15 C.F.R. § 930.31 define “federal agency activity” as any function performed by or on behalf of a federal agency in the exercise of its statutory responsibilities, while “federal development project” is defined as a federal agency activity involving planning, construction, modification, or removal or public works, facilities, or other structures, and includes the acquisition, use, or disposal of any coastal use or resource. NOAA regulations at 15 C.F.R. § 930.32 define the term “consistent to the maximum extent practicable” as fully consistent with the [enforceable policies](#) of the NHCP unless full consistency is prohibited by existing law applicable to the federal agency.

Any federal agency undertaking an activity within or outside the coastal zone that affects any coastal use or resource of the coastal zone, shall provide a consistency determination to the NHCP. Pursuant to NOAA regulations at 15 C.F.R. § 930.46, modifications of any such activity or development project previously reviewed by the NHCP, and determined to be consistent with the NHCP but have not yet begun, require initiation of another consistency review when the activity or development project presents substantially different effects on coastal uses or resources. In certain circumstances, even if a federal agency determines that the activity will not have coastal effects, the agency must provide a negative determination to the NHCP, pursuant to NOAA regulations at 15 C.F.R. § 930.35.

The following lists the consistency procedures for federal agency activities:

- Consistency determinations must be submitted to the NHCP at least 90 days before final approval of the activity unless the NHCP and the federal agency agree to a different schedule. To facilitate its consistency review, the NHCP recommends that federal agencies coordinate with the NHCP prior to submitting their consistency determination.
- Consistency determinations shall include a brief statement indicating whether the proposed activity will be conducted in a manner consistent to the maximum extent practicable with the NHCP’s [enforceable policies](#). Consistency determinations shall also include a detailed description of the activity, its associated facilities, and their coastal effects, and comprehensive data and information sufficient to support the federal agency’s consistency determination.



The NHCP shall inform the federal agency of its concurrence with or objection to the consistency determination within 60 days from the receipt of the consistency determination and supporting information. The 60-day review period shall not begin until the NHCP has received the federal agency's consistency determination and supporting information required by NOAA regulations at 15 C.F.R. § 930.39(a). If the information required by § 930.39(a) is not included with the consistency determination, the NHCP shall notify the federal agency in writing within 14 days of receiving the determination and supporting information that the 60-day review period has not begun. The NHCP's written notification shall identify missing information required by § 930.39(a) and state that the 60-day review period will begin when the NHCP receives the missing information.

- Within the 60-day review period, the NHCP may request an extension of the time to review the consistency determination and supporting information. The federal agency must approve one request for an extension period of 15 days or less, however, the federal agency may determine that a longer or additional extension period is appropriate.
- The federal activity is reviewed concurrently by the NHCP, and appropriate state, local and regional agencies to determine compliance with the NHCP's [enforceable policies](#) and state laws.
- The NHCP provides for public participation in its review of the consistency determination. In some cases, the public notice process of the federal agency proposing the activity is sufficient to meet the NHCP's requirements under the Federal Consistency Regulations (15 C.F.R. § 930.42).
- If the NHCP concurs with the federal agency's consistency determination, it shall notify the agency in writing. The federal agency may presume NHCP concurrence if a response is not received from the NHCP within 60 days from receipt of the consistency determination and supporting information.
- In the event the NHCP objects to the federal agency's consistency determination, the NHCP shall provide a written response to the agency with its reasons for the objection and supporting information.
- If the NHCP and the federal agency fail to agree on the consistency determination, either party may seek mediation from the Secretary of Commerce or from OCRM.

For an example of a federal agency activity consistency determination, please refer to [Appendix F](#).

See [CZMA § 307\(c\)\(1\)](#) and 15 C.F.R. part 930, subpart C for detailed consistency requirements for federal agency activities.



II. FEDERAL LICENSE OR PERMIT ACTIVITIES

Pursuant to [CZMA § 307\(c\)\(3\)\(A\)](#), any non-federal applicant for a required federal license or permit to undertake activity within or outside of the coastal zone, which affects any land or water use or natural resource of the coastal zone, shall provide in the application to the federal licensing or permitting agency a certification that the proposed activity complies with the [enforceable policies](#) of the NHCP and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish a copy of the certification and all necessary data and information to NHCP. Pursuant to NOAA regulations at 15 C.F.R. § 930.51(b), renewals and major amendments of existing licenses or permits trigger this same consistency requirement.

To assist applicants for federal licenses or permits, the NHCP has developed a list of federal license or permit activities that affect any coastal use or resource and which the NHCP has chosen to review for consistency with its [enforceable policies](#) (see [Appendix C](#)). The requirement to submit a federal license or permit consistency certification to the NHCP for review applies only to those activities listed in [Appendix C](#). The NHCP may also choose to review unlisted federal license or permit activities, pursuant to NOAA regulations at 15 C.F.R. § 930.54, however, any decision to review such unlisted activities must be approved by the Director of OCRM.

The following lists the consistency procedures for federal license or permit activities:

- To begin the process, applicants for those activities listed in [Appendix C](#) must submit the following information to the NHCP, pursuant to NOAA regulations at 15 C.F.R. § 930.57 and § 930.58:
 - A certification that the proposed activity complies with the [enforceable policies](#) of the NHCP and that such activity will be conducted in a manner that is consistent with the policies of the NHCP.
 - A copy of the completed application for the federal license or permit.
 - A detailed description of the proposed activity and its associated facilities, including an assessment of the probable coastal effects.
 - Maps, diagrams, site plans, and other technical data must be submitted when a written description alone will not adequately describe the proposal.
 - An evaluation that includes a set of findings relating the coastal effects of the proposal and its associated facilities to the relevant [enforceable policies](#) of the NHCP.

NOTE: It is recommended that applicants coordinate with the NHCP prior to submitting their consistency information and certification to ensure that the proposed activity will be conducted in a manner consistent with the NHCP's policies. It is also recommended that the above information be submitted to the NHCP at the same time the application is submitted to the federal permitting agency.



- Upon receipt of an applicant's consistency certification, in accordance with 15 C.F.R. § 930.57, and necessary data and information, in accordance with 15 C.F.R. § 930.58, the NHCP has six months in which to concur or object to the proposed federal license or permit activity.
- If an applicant fails to submit a consistency certification and/or fails to submit all necessary data and information, the NHCP shall, within 30 days of receipt of the incomplete submission, notify the applicant and the federal agency that the consistency certification and/or necessary data and information was not received and that the NHCP's six-month review period will commence on the date of receipt of the missing certification and/or necessary data and information.
- Within 30 days of receipt of the consistency certification and/or necessary data and information that was deemed missing, the NHCP shall notify the applicant and federal agency that the certification and necessary data and information is complete, the date the certification and/or necessary data and information deemed missing was received, and, that the NHCP's consistency review began on the date of receipt.
- The NHCP and the applicant may mutually agree in writing to stay the six-month consistency review period. Such an agreement must state a specific date when the stay will end and must be provided to the federal agency.
- The federal license or permit activity is reviewed concurrently by the NHCP, and appropriate state, local and regional agencies to determine compliance with the NHCP's [enforceable policies](#).
- The NHCP ensures timely public notice of federal license or permit activities subject to consistency review, in accordance with NOAA regulations at 15 C.F.R. § 930.61. In certain circumstances, the NHCP may rely upon the public notice provided by the federal agency reviewing the application for the federal license or permit, or may require the applicant to provide the public notice.
- If the NHCP concurs with the consistency certification, it shall notify the applicant and the federal agency in writing at the earliest practicable time. If the NHCP fails to respond within six months following commencement of its consistency review, concurrence is conclusively presumed.
- If the NHCP objects to the applicant's consistency certification within six months following commencement of review, it shall notify the applicant, federal agency and Director of OCRM of the objection.
- The applicant may choose to appeal the NHCP's objection by filing a notice of appeal with the Secretary of Commerce within 30 days of receipt of the objection.



NOTE: Applications for federal permits or licenses involving energy facilities are overseen by New Hampshire's Site Evaluation Committee (SEC), in accordance with [NH RSA 162-H](#). The NHCP reviews such applications to determine compliance with its [enforceable policies](#) and provides comments directly to the SEC. For the purposes of CZMA federal consistency, the SEC's process is used, and the NHCP's federal consistency decision is issued through the SEC.

For an example of a federal license or permit activity consistency certification, please refer to [Appendix G](#).

See [CZMA § 307\(c\)\(3\)\(A\)](#) and 15 C.F.R. part 930, subpart D for detailed consistency requirements for federal license or permit activities.

III. OUTER CONTINENTAL SHELF EXPLORATION, DEVELOPMENT AND PRODUCTION ACTIVITIES

Pursuant to [CZMA § 307\(c\)\(3\)\(B\)](#) any person submitting a plan to the Secretary of the Interior for the exploration, development of, or production from, any area which has been leased under the [Outer Continental Shelf Lands Act \(43 U.S.C. 1331 et seq.\)](#), and which affects any land or water use or natural resource of New Hampshire's coastal zone, shall include with the plan a certification that each activity described complies with the [enforceable policies](#) of the NHCP and that such activities will be carried out in a manner consistent with the NHCP.

The following lists the consistency procedures for outer continental shelf exploration, development and production activities:

- Pursuant to NOAA regulations at 15 C.F.R. § 930.76(a), persons submitting an Outer Continental Shelf (OCS) plan to the Secretary of the Interior shall:
 - Include a certification that the proposed activities comply with the [enforceable policies](#) of the NHCP and that such activities will be conducted in a manner that is consistent with the [enforceable policies](#) of the NHCP.
 - Include all necessary data and information, including maps, diagrams, site plans, and other technical data, pursuant to NOAA regulations at 15 C.F.R. § 930.58.
 - Include information, pursuant to the Department of the Interior's OCS operating regulations and OCS information program regulations.

NOTE: It is recommended that persons intending to submit an OCS plan coordinate with the NHCP prior to submitting the plan to ensure that the proposed activities will be conducted in a manner consistent with the NHCP's [enforceable policies](#).

- The Secretary of the Interior shall provide the NHCP with a copy of the OCS plan, the consistency certification and the necessary data and information.



- Upon receipt of a person's consistency certification and supporting information, the NHCP has six months in which to concur with or object to the consistency certification.
- If during the six-month review period the NHCP requests additional information, it must describe in writing to the person and the Secretary of the Interior the reasons why the information provided under § 930.76 is not adequate to complete its review, the nature of the information requested and the necessity of having such information to determine consistency with its [enforceable policies](#). Such a request for additional information must be made no later than three months after receipt of the consistency certification and supporting information.
- If the NHCP has not issued a decision or requested additional information within three months following receipt of the consistency certification, it shall notify the person, the Secretary of the Interior and the Director of OCRM in writing of the status of its review. Concurrence by the NHCP is conclusively presumed if it fails to adhere to this notification requirement.
- The NHCP and the person may mutually agree in writing to stay the six-month consistency review period. Such an agreement must state a specific date when the stay will end and must be provided to the federal agency.
- The OCS plan consistency certification and information is reviewed concurrently by the NHCP, and appropriate state, local and regional agencies to determine compliance with the NHCP's [enforceable policies](#) and state laws.
- Public notice procedures are identical to those described above for federal license or permit activities.
- If the NHCP concurs with the consistency certification, it shall notify the person, the Secretary of the Interior and the Director of OCRM in writing at the earliest practicable time. If the NHCP fails to respond within six months following commencement of its consistency review, concurrence is conclusively presumed.
- If the NHCP objects to the consistency certification within six months following commencement of review, it shall notify the person, the Secretary of the Interior and the Director of OCRM in writing of the objection. The person may then file an amended plan with the Secretary of the Interior or file a notice of appeal with the Secretary of Commerce within 30 days of receipt of the objection.

See [CZMA § 307\(c\)\(3\)\(B\)](#) and 15 C.F.R. part 930, subpart E for detailed consistency requirements for outer continental shelf exploration, development and production activities.

IV. FEDERAL FINANCIAL ASSISTANCE ACTIVITIES

Pursuant to [CZMA § 307\(d\)](#), state and local governments submitting applications for federal assistance under other federal programs, within or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone, must be consistent with the [enforceable policies](#) of the NHCP. To assist applicants for federal financial assistance, the NHCP has developed a list of federal financial assistance activities that affect any coastal use or resource and which the NHCP has chosen to review for consistency with its [enforceable policies](#) (see [Appendix C](#)). The requirement to submit an application for federal financial assistance to the NHCP for review applies only to those activities listed in [Appendix C](#). The NHCP may also choose to review unlisted federal financial assistance activities, however, any decision to review such unlisted activities must be approved by the Director of OCRM.

The following lists the consistency procedures for federal financial assistance activities:

- Applicants must submit applications for federal financial assistance to the NHCP for consistency review through the intergovernmental review process. The term “intergovernmental review process” describes the procedures established by states pursuant to federal [Executive Order 12372](#), “Intergovernmental Review of Federal Programs,” and pursuant to state Executive Order 83-10. For information regarding the intergovernmental review process, please contact the [New Hampshire Office of Energy and Planning](#) at (603) 271-2155.
- In addition to the federal financial assistance application, applicants must provide the NHCP with a brief evaluation on the relationship of the proposed activity and any reasonably foreseeable coastal effects to the [enforceable policies](#) of the NHCP.
- If the NHCP concurs with the proposed activity, the federal agency may grant the financial assistance to the applicant.
- If the NHCP objects to the proposed activity, it must notify the applicant, the federal agency and the Director of OCRM of the objection.
- In the event that the applicant and the NHCP cannot agree upon conditions which, if met by the applicant, would result in NHCP concurrence of the proposed activity, either party may request mediation by OCRM or the Secretary of Commerce.

See [CZMA § 307\(d\)](#) and 15 C.F.R. part 930, subpart F for detailed consistency requirements for federal financial assistance activities.

APPENDIX E.

MEDIATION, NHCP OBJECTIONS & APPEAL PROCEDURES

I. MEDIATION

If during the CZMA consistency review period a serious disagreement arises between the NHCP and a federal agency that cannot otherwise be resolved informally, either the state or federal agency may request mediation from the Secretary of Commerce or OCRM.

See [CZMA § 307\(h\)](#) and 15 C.F.R. part 930, subpart G for additional details regarding the mediation process.

II. NHCP OBJECTIONS TO PROPOSED FEDERAL ACTIVITIES

If the NHCP determines that a proposed federal activity is inconsistent with its enforceable policies, or if it determines that a federal agency, applicant or person has failed, following a written request, to submit sufficient data and information necessary to make a consistency decision, the NHCP may object to the consistency determination/certification. If the objection is based on a determination that the activity is inconsistent with its [enforceable policies](#), the NHCP must provide a written explanation as to why the proposal is inconsistent with specific [enforceable policies](#) of the NHCP. In addition, the NHCP may identify alternative measures (if they exist), which, if adopted, may permit the activity to be conducted in manner consistent with its [enforceable policies](#). If, however, the objection is based on a finding that the federal agency, applicant or person has failed to submit sufficient information, the NHCP must describe the nature of the information requested and the necessity of having such information to determine consistency of the federal activity with its [enforceable policies](#).

III. APPEALS

Applicants for federal licenses or permits, Outer Continental Shelf plans, or federal financial assistance may appeal the NHCP's consistency objections to the Secretary of Commerce within thirty days of receipt of the objection. The Secretary will then determine whether the federal activity is consistent with the objectives or purposes of the CZMA or is otherwise necessary in the interest of national security.

See [CZMA § 307\(i\)](#) and 15 C.F.R. part 930, subpart H for additional details regarding the appeal process.



APPENDIX F.

FEDERAL CONSISTENCY DETERMINATION TEMPLATE

The following document is intended to provide a template that federal agencies may choose to use when making a consistency determination under the [Coastal Zone Management Act \(CZMA\) section 307\(c\)\(1\) & \(2\)](#):

Federal Consistency Coordinator
New Hampshire Coastal Program - DES
50 International Drive, Suite 200
Portsmouth, NH 03801

RE: Coastal Zone Management Act Consistency Determination

This document provides the New Hampshire Coastal Management Program (NHCP) with the **[name of federal agency]** consistency determination under CZMA § 307(c)(1) **[or (2)]** and 15 CFR part 930, subpart C, for the **[name of federal activity]**. The information in this consistency determination is provided pursuant to 15 CFR § 930.39. This activity includes:

[describe the federal agency activity or reference relevant pages of NEPA document].

The **[name of federal agency]** has determined that the **[name of federal activity]** affects the land or water uses or natural resources of the state of New Hampshire in the following manner:

The NHCP contains the following applicable [enforceable policies](#):

[list and/or briefly describe the NHCP's applicable enforceable policies].

Based upon the following information, data and analysis the **[name of federal agency]** finds that the **[name of federal activity]** is consistent to the maximum extent practicable with the [enforceable policies](#) of the NHCP. **[provide information, data and analysis supporting the determination of consistency with the applicable enforceable policies].**

Pursuant to 15 CFR § 930.41, the NHCP has 60 days from the receipt of this letter in which to concur with or object to the consistency determination, or to request an extension. Concurrence will be presumed if the NHCP's response is not received by the **[name of federal agency]** on the 60th day from receipt of this letter. The NHCP's response should be sent to:

[provide federal agency contact information].



APPENDIX G.

FEDERAL CONSISTENCY CERTIFICATION TEMPLATE

The following document is intended to provide a template for non-federal applicants to use when making a consistency certification under the [Coastal Zone Management Act \(CZMA\) section 307\(c\)\(3\)\(A\)](#):

Federal Consistency Coordinator
New Hampshire Coastal Program - DES
50 International Drive, Suite 200
Portsmouth, NH 03801

RE: Coastal Zone Management Act Consistency Certification

This document provides the New Hampshire Coastal Management Program (NHCP) with the **[name of applicant]** consistency certification and necessary data and information under CZMA § 307(c)(3)(A) and 15 CFR part 930, subpart D, for the **[name of activity]**.

Certification:

[name of applicant] certifies that the proposed activity complies with the [enforceable policies](#) of the NHCP and will be conducted in a manner consistent with such program.

Necessary Data and Information:

1. **[describe the federal license or permit activity or reference relevant pages of the federal application, any associated facilities, and coastal effects. Provide materials that will facilitate evaluation of coastal effects].**
2. **[provide an evaluation that includes a set of findings relating the probable coastal effects of the proposed project and its associated facilities to the relevant enforceable policies of the NHCP].**

By this certification that the **[name of activity]** is consistent with the NHCP, the NHCP is hereby notified that it has six months from the receipt of this letter and accompanying information in which to concur with or object to **[applicant's name]** certification. Pursuant to 15 CFR § 930.62(b), if the NHCP has not issued a decision within three months following commencement of its review, it shall notify **[name of applicant and federal agency]** of the status of the matter and the basis for further delay. The NHCP's concurrence, objection or notification of review status shall be sent to:

[provide applicant and federal agency contact information].



APPENDIX H.

COASTAL PROGRAM REFERENCES

The following state agencies, all of which have jurisdiction within the coastal zone, help enforce the NHCP's [enforceable policies](#) and conduct reviews of federal activities occurring in the coastal zone:

(RSA = Revised Statutes Annotated)

<u>RSA #</u>	<u>Title or Description</u>	<u>Agency</u>
RSA 4:29	Acquisition and Disposal of Real Estate	Governor and Executive Council
RSA 12-A	Dept. of Resources and Economic Development	DRED ¹
RSA 12-E	Mining and Reclamation	DRED
RSA 12-G	Pease Development Authority	PDA ² Division of Ports & Harbors
RSA 21-O:5-a	Wetlands Council	DES ³ Water Division
RSA 79:10	Notice of Intent to Cut	DRED
RSA 125-C	Air Pollution Control	DES Air Resources Division
RSA 125-D	Acid Rain Control Act	DES Air Resources Division
RSA 143:21-a	State Shellfish Sanitation Control Authorities	DES Water Division
RSA 146-A	Oil Discharge or Spillage in Surface Water or Groundwater	DES Water Division
RSA 147:4	Removal, Notice	Dept. of Health & Human Services
RSA 147-A	Hazardous Waste Management	DES Waste Management Division
RSA 162-C	Council on Resources and Development	Office of Energy & Planning
RSA 162-H	Energy Facility Evaluation, Siting, Construction & Operation	All Relevant Agencies
RSA 206	Fish and Game Commission	NH Fish & Game Dept.
RSA 207:54	Enforcement of Laws	NH Fish & Game Dept.
RSA 211	Fish, Shellfish, Lobsters and Crabs	NH Fish & Game Dept.
RSA 212-A	Endangered Species Conservation Act	NH Fish & Game Dept.
RSA 214:1	Licenses	NH Fish & Game Dept.
RSA 216-A	Expansion of State Park System	DRED
RSA 217-A	NH Native Plant Protection	DRED
RSA 227-C	Historic Preservation	Dept. of Cultural Resources - Division of Historical Resources
RSA 227-G	Forestry – Policy, Definitions, & Administration	DRED
RSA 227-H	Public Forest Lands: Management, Acquisition & Lost Taxes	DRED
RSA 227-I	Forest Resources: Education, Promotion & Planning	DRED

<u>RSA #</u>	<u>Title or Description</u>	<u>Agency</u>
RSA 227-J	Timber Harvesting	DRED
RSA 227-K	Forest Health	DRED
RSA 227-L	Woodland Fire Control	DRED
RSA 230	State Highways	Department of Transportation
RSA 233-A	Access to Public Waters	Governor and Executive Council
RSA 270:72-a	Toilet Facilities	Department of Safety
RSA 270-D	Boating and Water Safety	Department of Safety
RSA 271	Pilots, Harbor Masters & Public Waters	PDA Division of Ports & Harbors
RSA 430	Insect Pests and Plant Diseases	Dept. of Agriculture, Markets & Food
RSA 431	Soil Conditioners	Dept. of Agriculture, Markets & Food
RSA 432	Soil Conservation & Farmland Preservation	Dept. of Agriculture, Markets & Food
RSA 482-A	Fill and Dredge in Wetlands	DES Water Division
RSA 483	NH Rivers Management and Protection Program	DES Water Division
RSA 483-B	Comprehensive Shoreland Protection Act	DES Water Division
RSA 485	Safe Drinking Water Act	DES Water Division
RSA 485-A	Water Pollution & Waste Disposal	DES Water Division
RSA 485-C	Groundwater Protection Act	DES Water Division
RSA 487	Control of Marine Pollution & Aquatic Growth	DES Water Division
RSA 674	Local Land Use Planning & Regulatory Powers	Municipalities

¹DRED = Department of Resources and Economic Development

²PDA = Pease Development Authority

³DES = Department of Environmental Services



APPENDIX I.

GENERAL INFORMATION/CONTACTS

For additional information regarding CZMA federal consistency in New Hampshire and for copies of this document please visit our web site at http://des.nh.gov/Coastal/Federal_Consistency.html or contact:

Christian Williams
Federal Consistency Coordinator
N.H. Coastal Program
N.H. Department of Environmental Services
50 International Drive, Suite 200
Portsmouth, NH 03801
Phone: (603) 559-0025 / Fax: (603) 559-0029
Email: cwilliams@des.state.nh.us

For additional CZMA federal consistency information, visit NOAA's Office of Ocean and Coastal Resource Management's Federal Consistency web page, at <http://www.coastalmanagement.noaa.gov/consistency/welcome.html>.

Please note, construction-related projects generally require permits from DES (e.g., dredge and fill, erosion control, 401 water quality certificate, etc.). For a more comprehensive review of potential state and federal permits needed for your project, please review the DES *Guidebook for Environmental Permits in New Hampshire*, on-line at <http://www.des.nh.gov/PermitGuide>.

For specific permit requirements, application forms, etc., contact:

Tim Drew, Administrator
Public Information and Permitting Unit
N.H. Department of Environmental Services
P.O. Box 95
Concord, NH 03302-0095
Phone: (603) 271-3306
Email: tdrew@des.state.nh.us